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Joint Committee on Taxation
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COMMITTEE ON WAYS AND MEANS

MARK-UP OF

H.R. 534
(REPEAL OF RECREATIONAL BOAT USER FEE)

I. Legislative Background and Summary

Legislative Background of H.R. 534

H.R. 534 was reported by the House Committee on Merchant Marine and Fisheries ("Merchant Marine") on August 1, 1991 (H. Rept. 102-182, Part 1). The bill was sequentially referred to the Committee on Ways and Means through the period ended September 27, 1991. Pursuant to Merchant Marine's request, the Committee on Ways and Means requested (and received) an extension of its sequential referral through October 18, 1991.

Summary of H.R. 534

As reported by Merchant Marine, H.R. 534 repeals the annual Coast Guard recreational boat user fee ("boat user fee") imposed by section 10401 of the Omnibus Budget Reconciliation Act of 1990 ("1990 Act"), effective on the date of the bill's enactment.

H.R. 534, as reported, also includes an amendment to partially raise offsetting revenues by imposing a fee on persons directly or indirectly electronically using certain tariff information from the Federal Maritime Commission (FMC) (the "FMC access fee"). Although the FMC access fee is projected to be effective on January 1, 1992 (the date that the bill begins to require water common carriers to file tariffs electronically with the FMC), it is projected that the electronic tariff data base system cannot be fully implemented until at least April 1, 1992.

In addition, H.R. 534 establishes a Strategic Sealift Fund ("Sealift Fund") in the Treasury. Amounts raised by the FMC access fee in excess of FMC requirements for the electronic data base would be credited to the Sealift Fund to be available for future authorizations for U.S. sealift requirements.

J862-36.

H782-43

Ways and Means Committee Amendment to H.R. 2950 as reported

On July 31, 1991, the Committee on Ways and Means approved a revenue title to H.R. 2950 ("Intermodal Surface Transportation Infrastructure Act of 1991"), as originally reported by Committee on Public Works and Transportation. The Ways and Means title included a partial repeal of the boat user fee, effective on January 1, 1992 (H. Rept. 102-171, Part 2). The revenue loss associated with this repeal generally would have been offset by increased motorboat fuels tax revenues attributable to a general five-cents-per-gallon increase in the motor fuels tax rates that also was included in the Ways and Means title to H.R. 2950. The Committee on Public Works and Transportation has revised H.R. 2950 in a manner that eliminates the need for that tax increase.

II. Present Law

Boat user fee

Under the 1990 Act, the Secretary of Transportation is directed to establish a "fee or charge" to be collected annually in fiscal years 1991-1995 from owners or operators of each "recreational vessel" greater than 16 feet in length. The boat user fee is to be imposed as follows: (a) for vessels of greater than 16 feet but less than 20 feet, not more than $25; (b) for vessels of 20 feet but less than 27 feet, not more than $35; (c) for vessels of 27 feet but less than 40 feet, not more than $50; and (d) for vessels of 40 feet or more, not more than $100.

The Coast Guard has issued rules[1] implementing the boat user fee, at the maximum levels allowed under the 1990 Act, effective July 31, 1991. Subject to several exemptions provided by the 1990 Act and/or by the Coast Guard rules, the boat user fee applies to all vessels operated on the navigable waters of the United States where the Coast Guard has a presence. Among the exempted vessels are: manually powered boats (e.g., canoes, kayaks, and rafts), public vessels (e.g., State and local government vessels), sailboards, vessel tenders, unpowered houseboats, and vessels of nonprofit organizations.

Failure to pay the boat user fee subjects the owner or operator of the vessel to a civil penalty of up to $5,000 for each violation. Also, when requested by the Secretary of Transportation, the Secretary of the Treasury is to deny clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) to a vessel for which a

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[1] See Federal Register, July 1, 1991.

fee has not been paid until the required fee has been paid or until a bond has been posted for the payment.

Revenues from the boat user fees are deposited in the General Fund of the Treasury as offsetting receipts for Coast Guard activities.

FMC access fee

As indicated in the Merchant Marine report on H.R. 534, water common carriers in U.S. foreign and domestic offshore shipping are required to file tariffs with the Federal Maritime Commission (FMC). These tariffs and service contracts are currently filed on paper. In recent years, the FMC has been designing a computer system to allow water common carriers to file tariffs electronically with the FMC. This computer system is known as the Automated Tariff Filing and Information System ("ATFI"). FMC's projected schedule is to require carriers to file tariffs electronically on a phased-in schedule beginning in January 1992. The electronically filed tariff information is the same information required under section 8(a)(1) of the Shipping Act of 1984 (46 App. U.S.C. 1707), and includes all rates, charges, classifications, rules, and practices assessed by a carrier between all points or ports on a route and any through transportation rate a carrier has established..

It is understood that the FMC plans to sell this tariff data to persons in bulk. Commercial vendors then could resell the information to carriers, shippers, and freight forwarders. The information also could be obtained from the FMC by remote access.

Sealift Fund

The sealift needs of the United States Government currently are funded through general fund appropriations.

III. Description of Provisions in H.R. 534, as Reported by the Committee on Merchant Marine and Fisheries

Boat user fee repeal

H.R. 534, as reported by Merchant Marine, repeals the recreational boat user fee established under the 1990 Act, effective on the date of the bill's enactment.

Federal Maritime Commission access fee and Strategic Sealift Fund

FMC access fee

H.R. 534 requires water common carrier tariffs to be filed electronically, beginning January 1, 1992, and fully phased in by April 1, 1992. The bill would impose a fee of 35 cents for each minute of remote computer access to the information in the ATFI. Purchases of the entire database in the ATFI would be allowed. If the purchased information were then resold or otherwise disseminated ("secondary use"), the 35 cents per minute fee would apply for each separate computer access to the information. There would be no charge for filing of the tariffs with the FMC. Federal agencies would be exempt from the fee. The FMC would be authorized to establish an alternative schedule of such fees that would result in equivalent receipts.

The bill also allows the FMC to retain the amount of fees collected necessary to carry out its requirements under the bill. Any excess fees collected would be deposited in a new Strategic Sealift Fund (see below).

Sealift Fund

H.R. 534 provides that any receipts collected under the FMC access fee in excess of amounts for FMC administrative requirements under the bill would be deposited in the General Fund of the Treasury, as offsetting receipts, to be transferred to a new fund in the Treasury known as the Strategic Sealift Fund ("Sealift Fund"). Monies in the Sealift Fund would be available, subject to future authorization for appropriation, to the Department of Transportation to (1) provide a manpower base for vessels in the Ready Reserve Fleet and (2) meet the sustainment sealift requirements of the United States.

Budget effects

As reported by Merchant Marine, the FMC access fee revenues are not sufficient to offset the revenue loss from repeal of the boat user fee in FY 1992. Delaying repeal of the recreational boat user fee until FY 1993 will not solve the budget problems associated with H.R. 534, as reported by Merchant Marine. This is because the Congressional Budget Office ("CBO") and the Office of Management and Budget ("OMB") estimates as to the revenue raised by the FMC access fee differ substantially (e.g., in FY 1995, the difference is $252 million).

CBO estimates, which are used for consideration of legislation in the House, project sufficient revenues to offset the cost of repealing the boat user fee in all fiscal years after FY 1992; however, OMB estimates project insufficient revenues for each year through FY 1995. Thus, if the bill as reported were enacted, an OMB-declared sequester could be expected to result.

IV. Possible Option

Adopt each of the following:

Boat user fee

Subject to the provisions protecting against a sequester, described below, repeal the boat user fee effective on October 1, 1992 (i.e., for fiscal years after 1992).

FMC access fee and Sealift Fund

Adopt the FMC access fee included in H.R. 534, as reported, except--

1. Provide that the fee will be effective on October 1, 1992.

2. Provide that the amount of the fee shall be the lesser of the amount specified in the bill, as reported, or such amount as is necessary to offset the revenues lost from repeal of the boat user fee.

3. Provide that, beginning after September 30, 1995, the fee may not exceed the amount necessary to offset the direct costs incurred by the FMC in providing access to automated FMC tariff data and may not be imposed on secondary uses.

2. Retain the revenues from the FMC access fee in the General Fund (i.e., delete the provisions of H.R. 534, as reported, that create a Sealift Fund).

Budget matters

1. Adopt the following anti-sequester protections:

   a. Provide that repeal of the boat user fee will not be effective, or that the fee will only be repealed in part, for any fiscal year in which the OMB estimate of H.R. 534, as enacted, would result in a net increase in the deficit under the pay-as-you-go rules of the 1990 Act.

b. Direct the Coast Guard to announce a boat user fee schedule to raise revenues sufficient to offset the projected deficit increase for each fiscal year for which OMB projects such an increase in the deficit.

c. Direct the Coast Guard to set a fee schedule that eliminates the boat user fee for categories of smaller boats entirely before reducing fees for categories of larger boats.

2. Include in the bill the statements regarding budget effects required under Clause 8 of Rule 21 of the House rules.